

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

TYSON FOODS, INC.

Employer

and

Case 26-RC-8482

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 2008**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Tyson Foods, Inc., operates a poultry processing facility in Hope, Arkansas. The Petitioner, United Food and Commercial Workers Union, Local 2008, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The Petitioner seeks to represent the Employer's regular full-time and part-time chicken catchers and loader operators in its live haul department. Following a hearing before a hearing officer of the Board, the parties filed briefs with me.

The sole issue raised at the hearing is whether the Employer's cage repair employees and truck shop employees possess such a close community of interest with the chicken catchers and loader operators that they must be included in the petitioned-for unit. The Petitioner asserts that the proposed unit is appropriate because the approximately 28 employees in the petitioned-for-unit possess a separate and distinct

community of interest. Contrary to the Petitioner, the Employer contends that the only appropriate unit is one that also includes its approximately 13 truck shop employees and 2 cage repair employees because these employees share a community of interest with those in the petitioned-for unit. The Employer's proposed unit would include about 43 employees.

I have considered the evidence presented at the hearing and the arguments advanced by the parties. As discussed below, I have concluded that the cage repair employees and the truck shop employees do not share a sufficiently close community of interest so as to require their inclusion in the unit. I have therefore directed an election in a unit comprised of the chicken catchers and loader operators in the Employer's live haul department, consisting of approximately 28 employees.

To provide a context for my decision and discussion of these issues, I will first present an overview of the Employer's operations. Next, I will discuss the legal standard, and then the facts relevant to that legal standard, followed by my analysis of the appropriate unit issue.

I. OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer operates a production facility in Hope, Arkansas where it produces poultry products for McDonald's Corporation. The Hope facility consists of a processing plant, live receiving area, scale house, truck shop, and cage repair shop. The production, maintenance and inventory employees, who work in the processing plant and scale house, are currently represented by the Petitioner in a separate unit.

The truck shop is located about 100 yards north of the scale house. At the truck shop, the truck shop employees store tools and equipment and perform maintenance and mechanical repairs on the Employer's "rolling stock," or vehicles.

The cage repair shop is located about 100 yards¹ north of the truck shop. At the cage repair shop, cage repair employees repair cages and store tools, equipment and cages to be repaired.

The catch crews do not have a work area at the Employer's facility. Instead, all of their work duties are performed at the farms run by independent contractors hired to raise broiler chickens owned by the Employer. The catch crews collect and load the mature broiler chickens for transport back to the Employer's facility for processing.

II. LEGAL STANDARD

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. *Overnite Transportation Company*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. *Bartlett Collins*, 334 NLRB 484 (2001). In determining whether the employees possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working

¹ The distance between the cage repair shop and the truck shop is an approximation based on examination of a drawing of the Employer's facility, Employer Exhibit 2.

conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Bartlett Collins*, supra, citing *Ore-Ida Foods*, 313 NLRB 1016 (1994). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951).

III. FACTS

A. Job Duties

Chicken Catch Crews: The Employer has four chicken catch crews, each of which consists of one crew supervisor, between six and eight catchers, and one loader operator.² There are currently 24 catchers and 4 loader operators. The catch crews go to the independent contractor farms, where the broiler chickens are raised to maturity, and collect the mature chickens for transport to the Employer's plant. The farms are located from 1 to 62 miles from the Employer's plant.

Prior to the start of their shifts, each catch crew meets at an assembly point at the scale house for transport to the farm where they will be loading first that day. The catchers ride to the farm in a transport van driven by the crew supervisor or a designated member of the crew. The equipment, a Moffett front end loader and the Bright chicken harvester, is transported to the farm on a trailer hauled by a semi-truck that is driven either by a live haul driver or the loader operator for the crew, if he has a commercial driver's license.

² The parties stipulated that the crew supervisors, whose names were not provided, are supervisors within the meaning of Section 2(11) of the Act.

Once the equipment is unloaded and in place, one of the catchers or the crew supervisor operates the head and arm of the chicken harvester. This machine arm is steered to pick up the chickens by rubber picking fingers which deposit the chickens onto a conveyor belt. At least two catchers walk beside the arm to "stir" the chickens, which prevents the chickens from piling up and smothering during the catch process. During daytime hours, another catcher sets up and removes curtains as needed to partition the chickens into sections, which prevent the chickens from moving away from the harvester and piling. At least two catchers are assigned to work on the deck, where the chicken cages are located. The conveyor belt of the harvester runs up to the deck where the catchers guide the chickens into each section of the cage. When a section of the cage is full, the door is closed and another section of the cage is filled. Once an entire set of cages is filled, the loader operator uses the front end loader to move the set to the live haul truck, for eventual transport back to the processing plant. On occasion, because of equipment malfunctions, the catchers may have to hand-catch the chickens for loading into the cages.

Generally, the loading process for a chicken house takes between 40 and 80 minutes, depending on the time of day. Once all the chickens in a house are loaded, the crew moves to the next chicken house, at the same farm or to an entirely different farm, to repeat the process until they have completed the designated loads for that shift. Once the crew finishes their designated loads for the day, they are transported back to the Employer's facility to clock out.

Cage Repair: The Employer currently has one cage repair employee, but presented testimony that it generally employs two cage repair persons. The cage repair

employee works in the cage repair shop, making repairs to the chicken cages used by the catch crews, if they are damaged during the catch process or transport.

Truck Shop: The Employer currently employs 13 employees in the truck shop. These employees are generally responsible for maintenance and repairs on the Employer's "rolling stock," which includes feed trucks and trailers, hatching egg trailers, pullet moving tractors and trailers, semi-trucks, transport vans, trailers, forklifts used on the back dock of the plant, Moffett front end loaders, and chicken harvesters. These employees work primarily in the truck shop located at the Employer's facility.

One of the 13 employees is assigned to perform clean-up work in and around the truck shop and another employee is assigned to wash the rolling stock serviced by the truck shop employees. Of the remaining 11 truck shop employees, some are assigned to perform maintenance and repairs on the Moffett loaders used by the loader operators, some are assigned to perform maintenance and repairs on the chicken harvester, and the rest are assigned to perform preventive maintenance and repairs on the rest of the rolling stock. The record does not specify the names or work assignments of each truck shop employee.

Generally, the truck shop employees perform their work in or near the truck shop. However, those employees assigned to perform maintenance and repairs on the Moffett loader and the chicken harvester may have to travel to the work site of a catch crew if the crew's Moffett loader or chicken harvester breaks down and needs repairs.

B. Wages, Hours and Working Conditions

The Employer's catch crews work Monday through Friday but do not have set 8-hour work shifts or set start and end times. Of the four crews, two generally start

between 2 a.m. and 3 a.m., the third starts between 8 a.m. and 9 a.m., and the fourth starts between 11 a.m. and noon. The crews work until their assigned loads for the day are completed. Assuming there are no equipment breakdowns or other problems, the crews work between 6 and 8 hours per day. They may be required to perform overtime work as needed to complete their assigned loads.

The truck shop and cage repair employees work set 8-hour shifts. The record is unclear as to the specific times for the shifts worked by the truck shop employees. At one point, Live Production Manager Mike Yates testified that some truck shop employees work from midnight to 8 a.m., and others work during the day, Monday through Friday. Later, Yates testified that the first truck shop shift is from 7 a.m. to 3 p.m. and the second shift works from 4 p.m. to midnight. The record does not clarify whether the truck shop employees rotate between these shifts, nor which truck shop employees are assigned to each specific shift. The cage repair employee works from 7 a.m. to 3:30 p.m., Monday through Friday. Both groups may be required to perform overtime work as needed.

The truck shop employees and cage repair employee are paid a set hourly rate. The truck shop employees are paid according to the Employer's maintenance pay scale. Depending on the position held by the truck shop employee, the pay ranges from \$8.12 to \$15.45 per hour. The record does not specify the specific wage rates of each of the truck shop employees. The cage repair employee is paid approximately \$8 per hour.

The catch crew employees do not receive a set hourly rate. Instead, they are paid by piece rate, determined by the total number of chickens caught during the shift.

The catchers are paid \$1.98 per thousand chickens caught. The loader operators who do not have a commercial driver's license are paid \$2 per thousand chickens caught. The average weekly pay of a chicken catcher is about \$500. Loader operators with a commercial driver's license are paid \$2.23 per thousand chickens caught. If the crew employees are required to work overtime, the overtime rate for each employee is determined by first calculating an hourly rate by dividing the employee's total pay for the week by 8 hours, then paying one and one-half times the employee's average pay rate for that week. If the crew is required to hand catch chickens during a load, the crew is paid at an unspecified higher rate per thousand chickens caught.

All the catch crew, truck shop and cage repair employees are paid on the same day, have the same holidays and 401(k) plans, and receive the same types of fringe benefits. These employees are also subject to the same employee handbook policies, attendance policies, and disciplinary procedures. They also use the same parking area and plant entrances and exits. They do not use the same time clock at the start and end of their shifts as the catch crew and cage repair employees use the time clock located in the scale house, while the truck shop employees use the time clock located in the truck shop.

The truck shop employees are required to wear uniforms consisting of cotton, navy blue shirts and pants. The catch crew employees and the cage repair employees do not wear uniforms. However, according to a photograph in the record, at least some catch crew employees wear orange safety vests during the loading process.

The truck shop and cage repair employees are provided with two assigned 15-minute paid breaks during each 8-hour shift. The truck shop employees use a break

room located in the truck shop while the cage repair employee uses the break room in the scale house. The catch crews are not provided with assigned paid breaks. Instead, the catch crew employees take breaks as permitted by their work demands, which may result in the employees not having any break time during a shift.

C. Commonality of Supervision

The four catch crews each have a crew supervisor who oversees the crew's work at the farms. The crew supervisors do not oversee the work of any other employees. The crew supervisors report to Live Haul Manager James Worthner, who reports to Live Production Manager Yates.³ The cage repair employee is also part of the live haul department and reports directly to Live Haul Manager Worthner.

The truck shop employees are supervised by Truck Shop Manager Johnny Davis.⁴ The truck shop manager reports directly to Live Production Manager Yates.⁵

D. Degree of Skills and Common Functions

The Employer does not require applicants for the catch crew positions to have any specialized education, skill or training requirements to be hired. Additionally, while two of the four loader operators have a commercial driver's license, possession of such a license is not a requirement to be hired for the loader operator position. The

³ The parties stipulated that the live haul manager is a supervisor within the meaning of Section 2(11) of the Act.

⁴ The parties stipulated that the truck shop manager is a supervisor within the meaning of Section 2(11) of the Act

⁵ The parties stipulated that the live production manager is a supervisor within the meaning of Section 2(11) of the Act.

Employer also does not have any specialized education, skill or training requirements for the cage repair position.

Human Resources Manager James William Ellerbee testified that the Employer does not have any specialized education, skill or training requirements for the truck shop positions. Ellerbee also testified that, while mechanical aptitude, skills and experience are not a requirement for the truck shop positions, the Employer ends up hiring persons with specialized skills and experience for these positions.

E. Frequency of Contact and Interchange

Catch crew employees do not fill in for truck shop employees and have no reason to visit the truck shop as a regular part of their work duties. Similarly, truck shop employees do not fill in on catch crews and, while certain truck shop employees may travel to the catch crew loading sites to make repairs to the Moffett loader or the chicken harvester, the truck shop employee never performs catch crew work while at the loading site. The record does not establish any permanent transfers between catch crew or truck shop employees.

With regard to the cage repair position, catch crew employees never fill in for the cage repair employee or go to the cage repair shop as a regular part of their job duties. When the cage repair employee is absent, the live haul manager fills in for him. The Employer's live production manager testified that from time to time, maybe once a month, a cage repair employee fills in on a catch crew when a catcher is absent. The record does not contain the names of any of the cage repair employees who filled in as a catcher, the dates when any such substitution occurred, or any payroll or other documents confirming that a cage repair employee worked as a catcher. The live

production manager also acknowledged that the catch crews sometimes work short and that when someone does fills in, more often it is a member of another crew. The Petitioner's witness, a chicken catcher, testified that he was not aware of any instance in the past three years when a cage repair employee filled in on a catch crew. He further testified that, if a catcher is absent, his position would be filled by a catcher from a different crew or the crew would work short that day. With regard to permanent transfers, the live production manager testified that maybe one or two cage repair employees have transferred to a catch crew position. However, he was unable to identify the names of the employees who transferred and did not know when the transfers occurred

IV. ANALYSIS

The Petitioner seeks a unit consisting of chicken catchers and loader operators. The Employer seeks to include truck shop and cage repair employees in the unit. I will first examine whether the petitioned-for employees have a sufficiently distinct community of interest to permit a finding that the petitioned-for unit is an appropriate unit. *Buckhorn, Inc.*, 343 NLRB No. 31 (2004). Since it is only necessary that the Petitioner seek an appropriate unit, I will then examine whether the truck shop and cage repair employees share a community of interest so close with that of the petitioned-for employees that the truck shop and cage repair employees must be included in the unit. *Bartlett Collins*, *supra*.

A. Community of Interest Between the Chicken Catchers and Loader Operators

The chicken catchers and loader operators work on the catch crews that are transported to farms where they collect mature broiler chickens for processing at the Employer's plant. Each of the four crews is composed of several chicken catchers and one loader operator, and is supervised by a crew supervisor. The job duties of the chicken catchers are to operate the chicken harvester, guide the chickens to the harvester and prevent piling, set up curtains to section off portions of the holding pen, and secure the chickens into cages. The loader operator operates a Moffett loader, similar to a forklift, to move the full cages onto the live haul truck for transport to the plant. While the job duties of the chicken catchers and loader operators are different, they work as a fully integrated team to accomplish the task of loading chickens for transport to the plant. Also, the employees on all four crews have the same job duties and, according to testimony, chicken catchers and loader operators regularly fill in on other crews for absent chicken catchers and loader operators.

The chicken catchers and loader operators on each catch crew report to the facility to clock in, then travel together to the farms. The crews also return to the Employer's plant together at the end of their shifts to clock out. They all use the time clock located in the scale house. The chicken catchers and loader operators are paid based on the number of chickens caught by the crew, have the same benefits, and are subject to the same policies. Further, neither the chicken catchers nor the loader operators are provided with assigned breaks during their shift.

Based on the above, I find that the petitioned-for employees share a community of interest and should be included in any unit found appropriate.

B. Community of Interest Between the Catch Crew and Truck Shop Employees

The job duties of the catch crew employees are wholly different from the duties of truck shop employees. The catch crew work is focused on chickens while the truck shop employees are focused on vehicles and equipment. Specifically, the truck shop employees are responsible for maintenance and repairs to feed trucks and trailers, hatching egg trailers, pullet moving tractors and trailers, semi-trucks, transport vans, live haul trailers, forklifts used on the back dock of the plant, Moffett front end loaders, and chicken harvesters. There is no overlap in the job duties of these employees and the catch crews and truck shop employees never perform each other's duties on a temporary basis.

The work locations of the two groups are also different. Other than reporting to the Employer's facility to clock in and out, the catch crews are not present at the Employer's facility. They perform all their work at farms located between 1 and 62 miles from the Employer's facility. Except for the instances where certain truck shop employees travel to the catch crew loading site to repair the Moffett loader or the chicken harvester, the truck shop employees perform their work in or near the truck shop.

The catch crews and truck shop employees also do not share common supervision. The catch crews are directly supervised by crew supervisors, who report to

the live haul manager. The truck shop employees are supervised by the truck shop manager, who reports to the live production manager.

While the catch crew and truck shop employees share the same benefits and are subject to the same policies, they do not work similar hours and are not paid in the same manner. The catch crews work three different shifts, generally lasting between 6 and 8 hours. The catch crew employees are paid by piece rate, as they receive a set dollar amount per thousand chickens caught. In contrast, the truck shop employees work set shifts that do not start and end at the same time as the catch crews and are paid a specific hourly rate. Further, the catch crew employees are not given assigned breaks, while the truck shop employees have two assigned 15-minute paid breaks each shift.

While certain truck shop employees have some contact with the catch crews when they repair the catch crew's equipment at the loading site, not all truck shop employees perform this type of work. While at the loading site, the catch crew employees do not assist the truck shop employee, nor does the truck shop employee assist the catch crew. Other truck shop employees have almost no contact with the catch crew employees, as their work is performed at the Employer's facility and the catch crew employees have no job-related reason to go to the truck shop. These employees also do not use the same time clock.

In *Novato Disposal Services*, 330 NLRB 632 (2000), the Board was presented with a similar issue to that presented here. In that case, the Board determined that mechanics and mechanics' helpers did not have to be included in a unit of drivers, drivers' helpers, laborers, bailers and attendants because they did not share such a

close community of interest as to require their inclusion in the unit. The Board specifically noted that the mechanics' work was limited to their shop and repairs made to vehicles outside the facility; the mechanics' interaction with other employees was limited to times when repairs were being made outside the shop; the interchange and transfer among the mechanics and other employees was limited; and there were differences in the pay and skills required for the mechanic's position.

The Board was faced with another similar situation in *Overnite Transportation Company*, 322 NLRB 347 (1996). In that case, the petitioner sought a unit of drivers and dockworkers at the employer's facility while the employer argued that the mechanics at the facility must also be included in the unit. The Board held that mechanics did not share such a close community of interest with the petitioned-for unit as to require their inclusion. The Board based its decision on the absence of regular interchange between the mechanics and other employees; the special skills required for the mechanics; lack of common supervision between mechanics and other employees; and differences in the shifts worked by mechanics and the other employees.

In its brief, the Employer, relies on *TDK Ferrites Corp.*, 342 NLRB No. 81 (2004) in support of its position that the truck shop employees share a community of interest with the petitioned-for unit. In that case, the Board held that the petitioned-for unit of maintenance employees should include production employees. That case is distinguishable because there the maintenance employees worked on the production floor and regularly filled in for production employees; the production employees regularly assisted the maintenance employees with repair work; production employees were regularly promoted to maintenance positions; and both maintenance and

production employees were paid on the same pay scale, worked the same hours, and had the same paid breaks. Here, the truck shop employees and catch crew do not fill in for each other or assist each other, do not regularly work together, are not paid on the same pay scale, and do not work the same hours or have the same paid breaks.

Based on the significant differences in job duties, job skills, job locations, and method of payment, and the lack of common supervision and of temporary and permanent interchange, I find that the truck shop employees do not share a sufficiently close community of interest with the petitioned-for employees as to require their inclusion in the unit. In its brief, the Employer argues that there is a close functional relationship between the catch crews and the truck shop employees because the truck shop employees maintain the catching equipment. It argues that there is a material dependence between the two groups because if the equipment is not operating at maximum efficiency, the catchers will not be able to maximize the piece-rate compensation and may be forced to catch by hand. While the Employer is correct that the catch crews are dependent upon the truck shop employees for proper operation of their equipment, that factor alone is not sufficient to compel the inclusion of the truck shop employees in the petitioned-for unit. Moreover, I find that in light of the significant differences between the two groups including the fact that the truck shop employees also work on equipment not used by the catch crew, the truck shop employees do not have a sufficiently close community of interest with the petitioned-for employees as to require their inclusion in the unit.

C. Community of Interest Between the Catch Crew and Cage Repair Employees

The job duties of the catch crew employees are also wholly different from the duties of cage repair employees. The catch crews catch chickens at farms away from the Employer's facility. The cage repair employees repair cages and work almost exclusively in the cage repair shop at the Employer's facility. The catch crew employees do not have any job-related reason to go to the cage repair shop.

Regarding interchange, catch crew employees do not fill in for the cage repair employees. When the cage repair employee is absent, the live haul manager fills in for him. One Employer witness testified that cage repair employees fill in on catch crews from time to time, maybe once a month. He also testified that when a cage repair employee works on a catch crew, the cage repair employee is paid on the same basis as other catch crew employees – by the number of chickens caught. However, the record contains no records, payroll or otherwise, confirming such substitutions. Moreover, a chicken catcher testified that crew absences are handled by the crew working short or having a member of another crew fill in and that in the last three years, he was not aware of a cage repair employee working on a catch crew. The Employer's witness confirmed that crews sometimes work short and that absences are more often filled by another crew member. No chicken catchers have transferred permanently to the cage repair position and the evidence of cage repair employees becoming chicken catchers was not definitive and was lacking in specificity.

The catch crews and cage repair employees do not share common direct supervision. The catch crews are directly supervised by crew supervisors who report to

the live haul manager, while the cage repair employees report directly to the live haul manager.

While the catch crew and cage repair employees share the same benefits and are subject to the same policies, they do not work similar hours and are not paid in the same manner. The catch crews work three different shifts, generally lasting between 6 and 8 hours, and are paid based on the number of chickens caught. In contrast, the cage repair employees work on one shift, from 7 a.m. to 3:30 p.m., and are paid a set hourly rate. Further, the catch crew employees are not given assigned breaks while the cage repair employees have two assigned 15-minute paid breaks each shift.

Other than the testimony noted above from the Employer's witness that cage repair employees have occasionally filled in on catch crews, there is no direct evidence that catch crew employees and cage repair employees have any direct contact in the performance of their job duties. The only potential evidence of contact between the catch crew employees and cage repair employees is that they use the same time clock in the scale house.

This situation is comparable to the issue considered by the Board in *American Security Corporation*, 321 NLRB 1145 (1996). In that case, the petitioner requested a unit of armored car division guards and sought to exclude the uniform security guards. The Board found the petitioned-for unit appropriate on the basis that the nature of the jobs performed by the two classes of employees was substantially different; there was a lack of day-to-day contact between each class of employees; the lack of common supervision; the difference in pay; and the limited transfer between the classes of employees. See also *Boudreaux's Drywall, Inc.*, 308 NLRB 777 (1992) (where the

Board excluded warehouse laborers from a unit of carpenters and jobsite laborers because of different supervision; differences in job duties; a lack of interchange with the unit employees; and different work hours).

In light of the differences in job duties, skills and location, method of payment, immediate supervision, and the limited amount of interchange between the catch crews and the cage repair employees, I find that the cage repair employees do not share a sufficiently strong community of interest with the petitioned-for employees so as to require the inclusion of the cage repair employees in the unit. The Employer argues that there is functional integration because the cage repair employees repair and maintenance of the metal cages makes them a part of the chain of production in getting the chickens to the plant for processing. While the work of the cage repair employees is an important part of the overall process, I find that factor even when combined with the occasional substitution on a catch crew is not sufficient to compel the inclusion of the cage repair employee in the unit given the other significant differences.

V. CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and part-time chicken catchers and loader operators employed at the Employer's Hope, Arkansas facility.

EXCLUDED: All office clerical employees, managerial employees, professional employees, temporary employees, truck shop employees, cage repair employees, guards, and supervisors as defined in the Act, and all other employees.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers, Local 2008. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the

election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the

employees in the unit found appropriate has been established. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.).

To be timely filed, the list must be received in the Regional Office, The Brinkley Plaza Building, 80 Monroe Avenue, Suite 350, Memphis, TN 38103-2416, on or before **September 22, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008 or at (615) 736-7761 or may be sent by e-mail to Region26@nrlrb.gov or Resnash@nrlrb.gov. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the

Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **September 29, 2005**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 15th day of September 2005.

/s/[Ronald K. Hooks]

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